

# HOUSE BILL REPORT

## SHB 1053

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### As Amended by the Senate

**Title:** An act relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

**Brief Description:** Implementing recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille and Upthegrove; by request of Washington State Bar Association).

**Brief History:**

**Committee Activity:**

Judiciary: 1/17/11, 1/27/11 [DPS];

General Government Appropriations & Oversight: 2/15/11, 2/18/11 [DPS(JUDI)].

**Floor Activity:**

Passed House: 3/7/11, 56-40.

Senate Amended.

Passed Senate: 4/5/11, 49-0.

House Refused to Concur.

Senate Amended.

Passed Senate: 4/21/11, 46-0.

#### Brief Summary of Substitute Bill

- Requires lay guardians to receive training if the training is made available by the Administrative Office of the Courts or superior courts.
- Requires courts to review guardianship reports and accounts and creates new deadlines for guardianship proceedings, including the notification of interested parties and filing of reports and accounts.
- Requires guardians to obtain letters of guardianship from the court before acting on behalf of an incapacitated person. Letters of guardianship expire and may be renewed upon court approval.
- Requires the court clerk to collect a fee for filings of guardianship accounts and reports.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Frockt, Kirby, Orwall and Roberts.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Klippert, Nealey and Rivers.

**Staff:** Kelly Pfundheller (786-7289).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

**Majority Report:** The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

**Minority Report:** Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Wilcox.

**Staff:** Alex MacBain (786-7288).

### **Background:**

#### Appointment of a Guardian.

Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to take care of himself or herself. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs or has a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety.

The court may establish a guardianship over the person, the person's estate, or both. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. Such person is responsible for assessing and meeting of the incapacitated person's physical, mental, and emotional needs. Any adult person residing in Washington may serve as a guardian unless the person is of unsound mind, has been convicted of a crime of moral turpitude, or is found unsuitable by the court. Professional guardians must be certified by the Certified Professional Guardian Board (Board) and must meet certain education, experience, and training requirements established by the Board.

#### Letters of Guardianship.

When a court appoints a standby guardian (who serves if the original guardian cannot), the court must issue letters of guardianship authorizing the standby guardian to act on behalf of the incapacitated person. There is no explicit statutory requirement to issue letters of guardianship to guardians or limited guardians.

#### Initial Requirements of Appointment.

Guardians and limited guardians must file a personal care plan within three months of being appointed, which includes an assessment of the incapacitated person's physical, mental, and emotional needs, and the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person. Guardians or limited guardians must inform the court of a designated standby guardian to serve the incapacitated individual if he or she dies or becomes incapacitated.

The court must notify the guardian or limited guardian of the persons who should receive copies of the pleadings filed in all proceedings after an individual is found to lack capacity. There is no deadline by which the guardian or limited guardian must notify those persons of their right to receive notice of the proceedings.

#### Intermediate and Final Reports.

Guardians and limited guardians must file annual reports regarding the status of an incapacitated person's well-being. While guardians and limited guardians of estates typically must file accounts annually, the courts may schedule the filing requirement at intervals up to 36 months if the value of the estate does not exceed more than twice the homestead exemption. Guardians of estates belonging to minors need not file accounts unless the guardian has withdrawal powers.

Upon the termination of a guardianship, guardians and limited guardians must:

- file a final report and/or account within 30 days of the termination of the guardianship; and
- petition the court for an order settling an account within 90 days of the termination.

#### Recommendations of the Washington State Bar Association.

In 2007 the Elder Law Section of the Washington State Bar Association formed a task force to examine the performance of the guardianship system in Washington. House Bill 1053 is comprised of the task force's recommendations.

#### **Summary of Substitute Bill:**

##### Guardianship Appointments.

Guardians or lay guardians who are not certified professional guardians or financial institutions must complete any training made available by the Administrative Office of the Courts or the superior court overseeing the appointment. In some circumstances a court may extend the deadline for training or waive the requirement.

### Letters of Guardianship.

When a court issues an order appointing a guardian or limited guardian, the clerk must issue letters of guardianship authorizing the guardian or limited guardian to act on behalf of the incapacitated person. A pattern form for the letters of guardianship is set forth in the act. The letters expire 30 days after the court is scheduled to review the guardian's annual report and/or account, but are renewed upon a court approval.

### Deadlines for Guardianship Filings and Proceedings.

Within 90 days of a guardian's appointment:

- the superior court may set a hearing reviewing the initial personal care plan;
- guardians and limited guardians must designate a standby guardian; and
- guardians and limited guardians are required to notify interested persons of their right to request special notice on the guardianship's proceedings.

The deadline for the annual account or report must be set within 90 days of the anniversary date of appointment, and the court must review it within 120 days of the anniversary date. All court orders approving accounts and reports must contain a guardianship summary, which is set forth in the act.

If a guardian or limited guardian fails to file an intermediate account and/or report or fails to appear at a hearing, the superior court has the authority to schedule a contempt hearing, appoint a guardian ad litem, require training, remove the guardian or limited guardian, or take other acts as the court deems just and equitable.

Upon the termination of a guardianship, the guardian or limited guardian is required to file the final report and/or account and the petition for settling the account within 90 days. The deadline for the petition can be extended for good cause.

### Filing Fee.

The incapacitated person's estate is charged a fee when the guardian files an account with the court. The amount of the fee is determined by a sliding scale based on the net fair market value of the estate. There is no fee if the net fair market value of the incapacitated person's estate is less than \$3,000. If the court finds that payment of the filing fee would result in substantial hardship, the court may waive the fee or reduce the fee amount.

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment allows the courts to issue letters of guardianship that are valid for up to five years (rather than requiring the letters to expire annually). When determining the time period for which the letters will be valid, the court must consider:

- the length of time the guardian has been serving the incapacitated person;
- whether the guardian has timely filed all required reports with the court;
- whether the guardian is monitored by other state or local agencies; and

- whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian.

The filing fee for accounts of guardianship estates is modified to apply to estates with a total fair market value greater than \$100,000 (rather than \$3,000). The Senate amendment clarifies that the court may review and approve accounts and reports filed by guardians without conducting a hearing. The Senate amendment modifies the list of possible actions that the court must take when a guardian or limited guardian fails to file an account or report or fails to appear at a hearing by specifying that, among the other actions, the court may hold a show cause hearing and at the hearing may take action to protect the incapacitated person, including removing the guardian and appointing a successor guardian.

The Senate amendment specifies that any required training for guardians and limited guardians provided by the Administrative Office of the Courts or a superior court must be made available in the form of a video or webcast at no cost to guardians or limited guardians. An extension for or a good cause waiver of the completion of the training requirement may be granted upon petition by the guardian or limited guardian or by any other method as provided by local court rule. A good cause waiver is limited to guardians appointed prior to the bill's effective date, who already possess the requisite knowledge to serve as a guardian without completing training. When determining whether there is good cause, the court must consider the list of factors provided in the amendment.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Judiciary):**

(In support) The task force appointed by the Elder Law Section of the Washington State Bar Association consulted with many groups in drafting the bill, including the Superior Court Judges' Association, the Administrative Office of the Courts, and court clerks. The task force concluded that the current system is lacking oversight, accountability, and funding.

The bill will increase oversight and accountability in Washington's guardianship system. Currently, it is difficult to determine the exact number and status of guardianships. Certified professional guardians are appointed only about 16 percent of the time. By providing oversight over all guardianships, the bill will allow the courts to fix problems and prevent tragedies. The proposed requirements would not be a burden on guardians or the courts. Many counties are already in compliance with the bill's requirements.

The bill should be amended to require training for guardians who are not certified professional guardians or financial institutions. Some counties currently provide training, so if it is available, it should be mandatory. The guardianship process is complicated and overwhelming for the families of persons who need guardians. Sometimes guardians do not

understand their responsibilities. Ideally, training should be made available to everyone at no cost. It will save money in the long run if all guardians are trained and informed.

(Opposed) None.

**Staff Summary of Public Testimony (General Government Appropriations & Oversight):**

(In support) There are guardianships that have been going on for years and no one has ever reviewed the guardianship. This bill provides an easy way to make sure that a judge takes a look at a guardianship. The bill includes training for guardianships and there are no costs associated with that portion of the bill. An online process has been set to ensure that every family guardian has a certain level of knowledge about guardianships. This bill will increase oversight and accountability in the state's guardianship system. The use of filing fees is an important investment intended to protect the state's most vulnerable citizens.

(Other) The bill imposes a lengthy set of user fees for people that need to use the court and the Superior Court Judges' Association opposes this. The business of government is justice and it should be provided to the citizens of the state, like police protection, rather than as a pay-as-you-go system. Our concern is not with the policy in the bill but rather the method of paying for it. In most counties, the processes of collecting the fees will be more expensive than the actual fees generated.

(Opposed) None.

**Persons Testifying (Judiciary):** Representative Moeller, prime sponsor; Robert Nettleton, Karen Treiger, and Timothy Williams, Washington State Bar Association; Diana Stadden, The Arc of Washington State; Louise Ryan, State Long-Term Care Ombudsman; David Lord, Disability Rights Washington; and David Maltman, Washington State Developmental Disabilities Council.

**Persons Testifying (General Government Appropriations & Oversight):** (In support) Robert Nettleton, Washington State Bar Association; David Lord, Disability Rights Washington; and Louise Ryan, Long-Term Care Ombudsman.

(Other) Steve Warning, Superior Court Judges' Association.

**Persons Signed In To Testify But Not Testifying (Judiciary):** None.

**Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight):** None.